JOINT PROFESSIONAL TRAINING AND SUPPORT INTERNATIONAL

BUSINESS LAW AND COST ACCOUNTING ASSIGNMENT

200 LEVEL

QUESTIONS

1. Consideration could be valid or invalid in contract, discuss in connection to mistakes.
2. What is a contract for unlawful purpose, discuss the situations in which fraud, duress or undue influence are present and explain the remedies available to victims of act rendering contract voidable.

GROUP 3

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1. **Consideration could be valid or invalid in contract, discuss in connection to mistakes.**

**What Is Consideration?**

**Consideration**, in contract law, an inducement given to enter into a contract that is sufficient to render the promise enforceable in the courts. The technical requirement is either a detriment incurred by the person making the promise or a benefit received by the other person. Thus, the person seeking to enforce the promise must have paid, or bound himself to pay, money, parted with goods, spent time in labour, or foregone some profit or legal right. In a contract for the sale of goods, the money paid is the consideration for the vendor, and the property sold is the consideration for the purchaser.

There are essentially six elements that must be present for a contract to be enforceable. There must be an offer, acceptance of the offer, consideration, capacity, mutuality and the terms and conditions must be legal and not in violation of any laws or ordinances. Our focus in this lesson is on **consideration**, or the benefit each party to a contract receives by entering into a contract. In other words, when two parties enter into an agreement, both parties must exchange one thing of value for another.

Let's take a very simple example to demonstrate how consideration works. If Joe offers to sell his scooter to Bill for 50 naira, Bill can accept the offer. Once the offer is accepted, Bill must raise the 50 naira in order to secure the scooter. Consideration can take on two forms:

* A promise to do something one is not legally bound to do otherwise, or
* A promise not to do something

A promise to do something one is not legally bound to do is simply performing the acts, or following through on the promises made in a contract, like the exchange between Joe and Bill in the scooter sale. On the flip side, if there is a legal obligation to perform an act, one cannot view performing the act a contract condition. For instance, a reward for information that leads to the arrest and conviction of a criminal cannot be claimed by a police officer iup the criminal is captured in the line of the officer's duty. After all, it is his obligation to catch a slippery criminal.

A promise not to do something could be a promise not to sue a party after restitution has been made. Let's revisit Joe and Bill. Once Bill took ownership of the scooter, he attempted to speed away. Bill did not realize that the scooter was in reverse. As Bill tried to stop the scooter, he ran into Joe's mailbox, knocking it to the ground. The mangled mailbox was in disrepair. Joe demanded $100 from Bill in exchange for waiving his right to sue in small claims court. Once Bill coughed up the cash, Joe could no longer sue for damages. The value of consideration must be determined objectively. Joe's mailbox has a specific value regardless of how sentimental he feels toward it. Lack of consideration in contract law means that one party to the contract had little or no imposing obligation to any terms of the agreement.

**Consideration,** which must be given in order to make a contract legally binding, is *legally sufficient and bargained-for value, given by the promisor in return for the promisee performing or refraining from performing* some act which results in a detriment to the promisee and/or a benefit to the promisor..A bargained for exchange in which there is a legal determinant to the promisor or legal benefit to the promise

# **Invalid Contracts**

IBusinesspeople have a common belief that after entering into a contract, there are no exceptions to its enforcement and are otherwise free from issues. ‘Contract’ is a written way to solidify an agreement among two parties in relation to business activity or any activity for that matter. A valid agreement exists, provided that the listed elements are suitably met. The fact of the matter is that not all contracts are **valid**. There may be a situation where the elements are absent – thus making it unenforceable or otherwise, not fully enforceable.

There may also arise a situation wherein the terms of the contract are against public policy. In such cases, the contract ‘even though it meets all elements’ is void. However, there are a number of differences between a contract that is ‘**invalid’** and one that is ‘void’.

## Elements of a Valid Contract

There are 3 elements of a contract that are essential for it to be enforceable. These are:

* 1. **Offer** – A promise to execute an action
* 2. **Acceptance** – Acknowledgement of the offer and accepting to perform it
* 3. **Consideration** – Something of material value that is agreed upon by both parties in return for performing the action

Without the presence of even one of these elements, a contract cannot be **valid**.

There are several situations where a contract becomes invalid or unenforceable. **Invalid Contracts**those that do not contain any one of the three elements, do not satisfy the terms or are illegal.

#### Contracts may become invalid under the following circumstances:

* If the contract is against public policy
* If the contract is illegal
* If the offer/acceptance/consideration calls for action that violates the law – such as gambling, robbery, etc.
* If the purpose of the contract is illegal

Contracts may be deemed unenforceable due to a variety of reasons. Sometimes, the contract is not legal but against public policy. For example, a clause in an employment contract to not compete in the organization is against public policy. Employers may do this to ensure that employees due not leave the organization. However, this restricts the right of free employment for an individual.

Breach of contract cannot be charged if the contract, itself, is invalid. In such cases, the suing party is not awarded any damages as the contract is considered unenforceable.

### The Contract Law

According to United States Code, Section 10: “All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void”

#### This means that for a contract to be valid, the following terms must be fulfilled:

* 1. The agreement must not be declared void
* 2. Creating a legal relationship must be the intent
* 3. It must be a lawful object
* 4. The offer, acceptance and consideration must be proper
* 5. The meaning must be clearly defined
* 6. Free consent of both parties
* 7. The parties must be in a capacity to form a contract
* 8. The consideration must be lawful
* 9. It must be done through legal formalities
* 10.The performance of contract must be possible

To make sure you have a valid contract, you should discuss the particulars of your contract with an experienced attorney who will represent your legal interests. As oftentimes there is a lot of ambiguity innate in the law and the written words of a contract, a lawyer can facilitate that your legal rights are enforced.

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**2. What is a contract for unlawful purpose, discuss the situations in which fraud, duress or undue influence are present and explain the remedies available to victims of act rendering contract voidable**.

A contract for unlawful purpose if it involves doing something that is a criminal act or a civil wrong, or against the public good. For example, it is an offence to sell a firearm to a person not licensed to hold one, so a contract to sell a firearm in these circumstances is illegal. A contract whose purpose is to get the party to it to break another [legally binding](https://lawhandbook.sa.gov.au/go01.php#idm140245574039648) contract that the party has made already is also illegal. Any contract that does not conform to applicable state and federal laws and does not include all required elements is not legally enforceable.

Every transaction entered by the private parties or Government requires a legal recognition, which is enforceable by the court of Law for claiming a right. Thus, this legal recognition which is enforceable in nature called “contracts”.

A contract will be considered illegal at its formation when it is incapable of performance without an illegal act. Contracts falling into this category cannot be enforced. Where a contract is illegal when formed, neither party will acquire rights under that contract, regardless of whether there was any intention to break the law. The contract will be void and treated as if it was never entered into.

Lord Justice Carnwath said that:

‘… if at the date of the contract the contract was perfectly lawful and it was intended to be performed lawfully, the effect of some illegal performance is not automatically to render the contract unenforceable’.

When a person is forced to do something against his or her will, that person is said to have been the victim of duress—compulsion. There are two types of duress: physical duress and duress by improper threat. A contract induced by physical violence is void.

For instance, Jack buys a car from a local used-car salesman, Mr. Alfred, and the next day realizes he bought a lemon. He threatens to break windows in Alfred’s showroom if Olson does not buy the car back for $2,150, the purchase price. Mr. Alfred agrees. The agreement is voidable, even though the underlying deal is fair, if Alfred feels he has no reasonable alternative and is frightened into agreeing. Suppose Jack knows that Alfred has been tampering with his cars’ odometers, a federal offense, and threatens to have Alfred prosecuted if he will not repurchase the car. Even though Alfred may be guilty, this threat makes the repurchase contract voidable, because it is a misuse for personal ends of a power (to go to the police) given each of us for other purposes. If these threats failed, suppose Jack then tells Alfred, “I’m going to haul you into court and sue your pants off.” If Jack means he will sue for his purchase price, this is not an improper threat, because everyone has the right to use the courts to gain what they think is rightfully theirs. But if Jack meant that he would fabricate damages done him by a (falsely) claimed odometer manipulation that would be an improper threat. Although Alfred could defend against the suit, his reputation would suffer in the meantime from his being accused of odometer tampering.

The Restatement of Contracts (Second) characterizes undue influence as “unfair persuasion.”Restatement (Second) of Contracts, Section 177. It is a milder form of duress than physical harm or threats. The unfairness does not lie in any misrepresentation; rather, it occurs when the victim is under the domination of the persuader or is one who, in view of the relationship between them, is warranted in believing that the persuader will act in a manner detrimental to the victim’s welfare if the victim fails to assent. It is the improper use of trust or power to deprive a person of free will and substitute instead another’s objective. Usually the fact pattern involves the victim being isolated from receiving advice except from the persuader.

A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. A voidable contract becomes nullified, only when it lacks the enforceability of the bonds or if one party wants to take a step back. If there is absent of mutual consent then it became an invalid contract. Voidable contracts are governed by Arts. A void contract is nonexistent and cannot be upheld by any law.

* **Rescission** is an equitable remedy which allows a contractual party to cancel the contract. Parties may rescind if they are the victims of a vitiating factor, such as misrepresentation, mistake, fraud, duress, or undue influence. Rescission is the unwinding of a transaction. This is done to bring the parties, as far as possible, back to the position in which they were before they entered into a contract. ***Rescission" at common law****.* Rescission at common law (as distinct from rescission in equity) is a self-help remedy: historically, the common law courts simply gave effect to the rescinding party's unequivocal election to rescind the contract. Rescission at common law is only available for fraudulent misrepresentations and duress. Rescission renders the contract void *ab initio (*from the beginning) and courts will only grant rescission under common law if the parties can be restored to their original positions prior to the formation of the contract.
* Rectification is another equitable remedy whereby it can be proven that the written document does not adequately reflect a prior oral agreement which has been made. The court therefore effectively re-drafts the agreement to give effect to the true intent of the parties; for example, if it can be shown that the consideration had not been given when the document indicated that it had. Rectification as a remedy is a device that is an exception to the parol evidence rule. The parol evidence rule, as you have learned, states   
  generally that a contractual document will not be altered or varied by the admission of extrinsic oral evidence.

References

[Illegality in contracts – The In-House Lawyer (inhouselawyer.co.uk)](https://www.inhouselawyer.co.uk/legal-briefing/illegality-in-contracts/#:~:text=Lord%20Justice%20Carnwath%20said%20that%3A%20%E2%80%98%E2%80%A6%20if%20at,is%20not%20automatically%20to%20render%20the%20contract%20unenforceable%E2%80%99.)

[10.1: Duress and Undue Influence - Business LibreTexts](https://biz.libretexts.org/Bookshelves/Law/Book%3A_Introduction_to_Contracts_Sales_and_Product_Liability/10%3A_Real_Assent/10.01%3A_Duress_and_Undue_Influence)

[The Restatement (Second) of Contracts on JSTOR](https://www.jstor.org/stable/27876768)